

RD AN No. 3878 (4274-D)
June 24, 2003

SUBJECT: Intermediary Relending Program
Security – Uniform Commercial Code

TO: State Directors, Rural Development

ATTN: Business Programs Directors

PURPOSE:

The purpose of this Administrative Notice (AN) is to provide guidance regarding the requirements of RD Instruction 4274-D, section 4274.326, Security.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 3758 (4274-D) dated May 8, 2002.

IMPLEMENTATION:

RD Instruction 4274-D, section 4274.326, regarding security, requires the Rural Business-Cooperative Service (RBS) to take a security interest in all assets currently in or hereafter placed in the intermediary's Intermediary Relending Program (IRP) revolving fund. Until recent enactment of the new Uniform Commercial Code (UCC) provisions, it was uncertain how to secure such an interest. Now it is clear that an appropriate control agreement with the depository bank is sufficient to protect RBS' security interest in the IRP bank account. **Therefore, you must work with your Office of the General Counsel (OGC) Regional Office to secure all outstanding IRP depository bank accounts before August 1, 2003.**

EXPIRATION DATE:
June 30, 2004

FILING INSTRUCTION:
Preceding RD Instruction 4274-D

The Letter of Conditions for each IRP loan approved after the date of this AN will require the intermediary to give RBS a first lien interest in the intermediary's revolving fund account under the applicable UCC provisions. Unless advised differently by OGC, the following condition should be inserted in all future Letters of Conditions:

“The intermediary's attorney will provide an opinion, satisfactory to RBS, that RBS has a first lien position on the borrower's IRP depository bank account.”

In addition to normal security documents, a first lien interest in the intermediary's revolving fund account will be done by a control agreement satisfactory to RBS. The control agreement does not require RBS' signature for withdrawals. The depository bank shall waive its offset and recoupment rights against the depository account to RBS and subordinate any liens it may have against the IRP depository bank account. No specific control agreement form is prescribed.

If we can be of further assistance, please contact David Lewis, Loan Specialist, Specialty Lenders Division Servicing Branch, (202) 690-0797.

(Signed by John Rosso)

JOHN ROSSO
Administrator
Rural Business-Cooperative Service